

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JOSE GALLIMORT,

4 Plaintiff

5 v.

6 BRIAN SANDOVAL, et al.,

7 Defendants

Case No.: 2:17-cv-02712-APG-VCF

**Order Accepting Report and
Recommendation and Closing Case**

[ECF No. 6]

8 On June 27, 2018, Magistrate Judge Ferenbach recommended I dismiss counts 3, 4, and 5
9 of plaintiff Jose Gallimort's complaint because Gallimort challenges the constitutionality of his
10 imprisonment, and thus his claims are barred by *Heck v. Humphrey*. Judge Ferenbach also
11 recommended that I decline to exercise supplemental jurisdiction over claims 1 and 2 because
12 those claims raise only state law issues. Gallimort objects, asserting that his claims are valid.

13 I conducted a de novo review of Judge Ferenbach's recommendations. Judge
14 Ferenbach's Report and Recommendation sets forth the proper legal analysis and factual basis
15 for the decision.


16 Gallimort misunderstands the basis for Judge Ferenbach's recommendation. Judge
17 Ferenbach did not recommend I dismiss Gallimort's claims on the merits. Rather, under the rule
18 announced in *Heck v. Humphrey*, if a judgment in the plaintiff's favor in an action under 42
19 U.S.C. § 1983 "would necessarily imply the invalidity of his conviction or sentence . . . the
20 complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence
21 has already been invalidated." 512 U.S. 477, 487 (1994). Gallimort's claims in counts 3, 4, and
22 5 necessarily challenge his criminal conviction and Gallimort has not indicated his criminal
23 conviction has been invalidated. To the contrary, Gallimort lists his address as High Desert State

1 Prison and states habeas corpus was recently denied. ECF No. 1-1 at 7. Accordingly, I dismiss
2 Gallimort's claims in counts 3, 4, and 5, without prejudice to Gallimort refiling his claims should
3 his criminal conviction later be invalidated.

4 Having dismissed the federal claims, I decline to exercise supplemental jurisdiction over
5 counts 1 and 2 because they assert only state law claims. *See* 28 U.S.C. § 1367(c). Gallimort
6 may bring those claims in state court.

7 IT IS THEREFORE ORDERED Judge Ferenbach's report and recommendation (**ECF**
8 **No. 6) is accepted.** Gallimort's claims in counts 3, 4, and 5 are dismissed without prejudice. I
9 decline to exercise supplemental jurisdiction over the claims in counts 1 and 2. The clerk of
10 court is instructed to close this case.

11 DATED this 7th day of August, 2018.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE